IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.544 of 1995
Date of decision:22.12.2006

Commissioner of Income Tax, Haryana, Rohtak

....Petitioner

versus

M/s.Saraswati Industrial Syndicate Limited, Yamunanagar

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Yogesh Putney, Advocate, for the revenue.
Mr. Akshay Bhan, Advocate, for the assessee.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Delhi Bench (C), New Delhi (for short, 'the Tribunal'), arising out of its order dated 22.1.1993 in ITA No. 2393/Del/89, for the assessment year 1986-87:-

> "Whether on the facts and in the circumstances of the ase, the ITAT was right in law in confirming the order of the CIT(A) who deleted the interest of Rs.5,58,755/- charged under section 216 of the Income Tax Act, 1961, by the Assessing Officer?"

The assessee filed estimate of advance tax under section 209A (1) of the Income Tax Act, 1961 (for short, 'the Act') on 15.6.1985 estimating total income at Rs.1.41 crores. It paid first instalment of advance tax of Rs.47 lacs on 15.6.1985. Second instalment of the same amount was paid on 15.9.1985. On 14.12.1985, the estimate of advance tax was filed estimating total income at Rs.2.90 crores. Third instalment of advance tax of Rs.1.96 crores was paid. In its return filed on 30.6.1986, income of Rs.5,44,30,070/- was disclosed. Later, revised return was filed on 28.7.1988. The Assessing officer completed assessment at Rs.5,89,08,770/- vide order dated 28.9.1988 and charged interest of Rs.5,88,755/- under

section 216 of the Income tax Act, 1961 (for short, 'the Act').

The CIT(A) accepted the plea of the assessee that advance tax having already been paid, interest was not liable to be paid under section 216 of the Act. It was observed:-

> "3. I have carefully considered the arguments for the appellant and find force in them. I am satisfied that the appellant had complied with all the obligations cast upon it under the law in this regard and as such cannot be subjected to the penal interest under section 216. I am not able to accept the arguments of the learned Assessing Officer that the appellant should have filed the estimate under section 209A(4) much earlier than just before the last date for payment of third and final instalment of advance tax. When the provision itself gives an option to the appellant to file its estimate of advance tax at anytime on or before last date or payment of final instalment of advance tax, the department cannot feel aggrieved if the appellant files such an estimate within time. I am in respectful agreement with the observations reproduced above of the ITAT C-Bench, Bombay in this regard. For the reasons mentioned above, the interest under section 216 is ordered to be deleted."

The Tribunal affirmed the said view following judgment of the Calcutta High Court in **CIT v. Indian Tube Co. Limited (Now Tata Iron and Steel Company Limited)**, (1992) 197 ITR 522. It was observed:-

> "The legislature has made a clear distinction between a statement which is required to be filed under section 209A(1) (a) of the Income Tax Act, 1961, and an estimate which is required to be filed either under section 209A (2) which is to be made in lieu of the statement to be made under section 20A(1) (a) or an estimate which is required to be filed under section 209A(3) or (4) of the Act. Further, when an assessee is required to file a statement under section 209A(1)(a), he is not to estimate his current income. He has to comply with the provisions by furnishing a statement in accordance with section 209(1) (a) (or (d) (1) of the Act. To comply with the aforesaid provision, no estimate of the current income is required to be made by the assessee. He merely calculates his advance tax on the basis of his total income on the basis of the return subsequently filed where there is a payment under section 140A of the Act, whichever is higher. Hence, the interest which is levied under section 216 cannot be attracted to a case where the assessee is

> required to file a statement under section 209A(1). Section 216 is attracted only in a case where the assessee has to estimate his current income and such estimate is found subsequently to be on underestiamte compared to the later estimate filed by him in the last instalment. Where an assessee is not required to file the estimate of his income, the question of underestimating the same cannot and does not arise and the provisions of section 216 of the Act cannot be attracted in such a case."

We have heard learned counsel for the parties and perused the record.

From the conclusions recorded by the Tribunal, we find that the assessee had complied with the provisions of Section 209A(1) of the Act and furnished the statements and paid advance tax accordingly. The Tribunal relied upon judgment of Calcutta High Court in **Indian Tube Company's** case (supra). Learned counsel for the revenue could not point out any issue on which the facts of the case in hand were different as compared to view taken by Calcutta High Court. It also could not be disputed that view taken by Calcutta High Court was followed by Mumbai High Court in **CIT v. Zuari Agro Chemicals Limited,** (2005) 279 ITR 387 and there being no contrary view on the subject, we deem it appropriate to reiterate the same view and accordingly, answer the questions against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

December 22, 2006
'gs'

(Rajesh Bindal)
Judge